Supreme Court, U.S.
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In The

SUPREME COURT OF THE
UNITED STATES
No. 86- 873

ANTONIO MAZZA,
Petitioner

V

UNITED STATES,
Respondent

Supplemental Petition for a Writ of Certiorari to the First Circuit Court of Appeals And Opposition to Respondents' Brief in Opposition to Certiorari

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By,

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14 pgs

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REPLY STATEMENT AND ARGUMENT

Contrary to respondants misstatement (Resp. Brief pp. 9 n. 6), the Petitioner properly raised his inability to confront and crossexamine the Govt. Agents (Appellants' primary brief pp. 31 top paragraph) in the Constitutional standard sufficient to allert the 1st Circuit to his claim of a denial of a fair trial. Respondants' also acknowlegde this in their opposition to the hearsay issues of Barrasso and the Agents by their reply brief (1st Cir. Appellee's primary answering brief pp. 15) in the First Circuit citing the error as harmless under the decision in United States V. Echeverry, 759 F2d 1451,1457 (9th Cir 1985) (We apply the standard of harmless beyond a reasonable doubt to Echeverry's claim) id.

In fact Petitioner submitted both CHAPMAN and/or KOTTEAKOS (Appellant's brief pp. 45) to the First Circuit, and the higher standard is preserved for review by this Court.

In Section *b.* of respondants' opposition to the petition for certiorari, Respondants' counsel Mr. Fried attempts to intentionally misdirect/mislead this Court.

In fact Petitioner clearly complained of the Governments' introduction of a pending murder trial, (Pet. for Cert. pp. 20 and cases cited at n. 7)

Respondants' intentionally misleading opposition to a seperate argument , (not presented by the Petition for Cert.), concerning a murder conviction, should not be adopted by this Court. In Fact, respondant lied.

At Tr.T. Vol. 8 pp. 161-162

Q Okay. Now what did Mr. Mazza tell you at this time ?

Mr. O'DONOVAN: Respectfully may we have the entire conversation?

A. Mr. Mazza said that he was in organized crimeup here.

MR. FARESE: Your Honor, I Object . I ask that be stricken unless he's got a recording of it.

THE COURT. It May Stand.

Q What else did he say ?

A And that he was presently out on bail for First-Degree murder.

MR. O'DONOVAN. May this Be Stricken?

MR. FARESE: Move for a Mistrial.

THE COURT: NO.

Q What did you say in response ?

THE COURT: Overruled. I should say, for the reasons I already stated at side bar, but also, this is not a case in which the jury should consider whether or not these are truthful statements. In other words, it is not of concern to you whether indeed, if Mr. Mazza said it at all, which is up to you, that he is indeed a member of organized crime or that he was on bail for murder. It doesn't matter whether that's true or not. What you have to decide is whether it wassaid at that time.

The First Circuits' consideration of the above-admitted evidence (admitted at trial) is set out in the Appendix pp. 57-58.

In a *Third* area of intentional misrepresentation, Solicitor General Fried's opposition pp. 10, ommits even more than the First Circuit did in the 52b analysis of Judge Mazone requiring a unanimous vote by the

jury in their second day of deliberations, as to which piece of tape, or which specific instruction they wished to rehear.

In Fact the jury came back with (2) TWO questions; the first was a request to rehear the tapes; and the second was to rehear the judges instructions (Tr.T. Vol. 11 pp. 9). In the pre-reinstruction colloquy only the request for rehearing the tapes was discussed by Judge Mazzone and counsel (Vol. 11, pp 1----9) and Judge Mazzone required the jury to unanimously decide which tapes they wished to rehear.(Vol. 11, pp. 9). This had a spillover effect and possibly the defense was temporarily paralyzed when the Court summarily chastised the jury for wishing to make him repeat his 30 minute instructions.(Which he said then must include the naming of the foreman....and some other things he was sure they may not need to hear.)

Judge Mazzone actually answered:

Q. The second request is:

"Could we rehear the Judge's instructions?"

JUDGE MAZZONE: "At this time I'm going to deny that request."....."If all 12 of you agree that all 12 of you want all the tapes played over again, then you may have it." "...I think you should give it further deliberation, whether you need them all or whether you want particular ones..."(Vol. 11, pp. 9) Judge Mazzone then used the same analogy to chastizing the jury for wishing to *rehear* the instructions which "took about a half hour to give you." He again asked them to "maybe focus on a particular part of the instructions that bothers you most."(Vol. 11 , pp. 10) He then chastized the jury saying:

> "To hear the Judge's instructions means for me to repeat word for word what I told you yesterday, some of which I'm sure as the naming of Mr. Hosmer or filing out the jury slips and all perhaps you do not require." (Vol. 11, pp. 10)

In the pro se petition for rehearing and rehearing En Banc (pp. 9) the Petitioner pointed out to the First Circuit that they mis-read his argument and left parts of the total(Vol. 11) questions and answers out of their published opinion.

The appellant/Petitioner was entitled to have a *unanimous* vote of 12 jurors on guilt or innocence, PARKER V. GLADDEN, 385 U.S. 363, at 366 (1966 Per Curiam) (Harlan,J. Dissenting); the bizarre requirment made by Judge Mazzone, that the jury hold a *unanimous vote* as to which instructions they wished to "rehear" or tapes, in fact was a judicial "summary" 'cursory' denial of reinstruction, which, --- even if only one juror forgot what the judges instructions were --- , severely prejudiced the appellant/ Your Petitioner,BOLLENBACH V. UNITED STATES, 326 U.S. 607, 612-614(1946)

The respondants' totally avoided the main conflicting cases of UNITED STATES V. WEBSTER, 750 F2d 307, at 331 (1984) cet. denied. 105 S.Ct. 2340-2341(1985); GOVERNMENT OF VIRGIN ISLANDS V. BEDFORD, 671 F2d 758, at 762 (3rd Cir. 1982)Accord, following in line UNITED STATES V. ZARINTASH, 736 F2d 66, at 72 (3rd Cir. 1984) (Quoting Schneble V. Florida,405 U.S. 427, at 432 (1972)

Since the First Circuit found Barrasso's testimony was most likely bolstered (by the violation of the federal rules of evidence, during Agent's testimony), in a very similar case the Eigth Circuit has said "We cannot say that the error was harmless." UNITED STATES V. AZURE, 801 F2d 336, at 341 (Sept. 17,1986 8th Cir. 1986).

In addition the Eigth Circuit has decided a similar case using "no specific standard", UNITED STATES V. MARTIN,798 F2d 308, at 311(1986) The Seventh Circuit has ruled in square conflict by adopting a "harmless beyong a reasonable doubt standard" for violations of the federal rules of evidence. UNITED STATES V. BINDER, 794 F2d 1195, at 1202 (7th Cir. 1986)Rehearing & Rehearing En Banc denied. cf. UNITED STATES V. CERRO, 775 F2d 908, at 916 (7th Cir. 1985) cf UNITED STATES V. NORWOOD, 798 F2d 1094, at 1098 (7th Cir. 1986)

"It is always perilous to speculate on what the effect of evidence improperly admitted was on a jury, or what the effect of evidence improperly excluded would have been. See. Teitelbaumn Sutton-Barbere & Johnson, EVALUATING THE PREJUDICIAL EFFECT OF EVIDENCE; CAN JUDGES IDENTIFY THE IMPACT

OF IMPROPER EVIDENCE ON JURIES ?, Wis. L.Rev. 1147 (1983).

Considering what the effect of defense counsel's 277 objections (only 23 of which were sustained), during six-hundred pages of double and triple hearsay, and the impossibility of effectively crossexamining Barrasso, UNITED STATES V. KOHAN, 806 F2d 18, at 23 (2nd Cir 1986)(Quoting Gordon V. United States, 344 U.S. 414,423(1953), and the similar adverse effect in attempting to cross-examin Govt. Agents, MOONEY V. HOLOHAN, 294 U.S. 101(1936) does the fact the First Circuit ****stripped**** the error from the whole (Appendix pages 23-47) taking up twenty four pages of the decision, and the First Circuit using thirty more pages (Appendix pp. 1 through 23 and 48 through 54) to explain the twenty four pages they stripped from the 1100 page transcript, require reversal and remand of this case for reconsideration by the First Circuit ?

Your Petitioner presently has a conflict (3 seperate tests) within his own case, UNITED STATES V. MAZZA, 792 F2d 1210 (1986), and his case is in conflict with the 3rd, 5th and 7th Circuit cases set out herein.

The Government would banter semantically inane phrases to tell this Court that all three seperate tests are actually the same. Although the Petitioner would mildly oppose the Governments' logic, he would suggest that *the question is whether there is a reasonable possibility (this 600 pages of triple hearsay and 54 page First Circuit explanation) that the error complained of might have contributed to Petitioners conviction; particularly after the jury was improperly told he was out on bail for First-degree Murder, and some members of the jury forgot what the Judges instructions had been. FAHY V. STATE OF CONNECTICUT, 375 U.S. 85,86-87(1963);CHAPMAN V. CALIFORNIA, 386 U.S. 18,23(1967) (or a Modified New KOTTEAKOS standard)

RESPECTFULLY SUBMITTED,

February 10, 1987

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VERIFICATION:

I Antonio Mazza hereby certify that each and every record fact and transcript or brief citation herein is true and correct, of my own personal knowledge.

Antonio Mazza
ANTONIO MAZZA

Signed and Sworn Before Me: [illegible]

My Commission Expires Dec 18 1988